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In the Supreme Court of the United States.

OCTOBER TERM, 1902.

THE UNITED STATES, APPELLANT;
v.
ARTHUR B. RAGGIO. } No. 252.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

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In the Supreme Court of the United States.

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THE UNITED STATES, APPELLANT,
v.
ARTHUR B. BARRINGER. } No. 252.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

STATEMENT OF THE CASE.

This suit was brought in the Court of Claims by a temporary employee of the Government Printing Office for a money equivalent for unused and accumulated *pro rata* leaves of absence, and is one of a class of cases affecting many hundreds of employees of the Government Printing Office, if not all Government employees, who have been granted leaves of absence by act of Congress.

The claimant, Arthur B. Barringer, was employed as a compositor in the Government Printing Office during the following different periods:

December 31, 1895, to February 26, 1896, inclusive;
July 2, 1897, to July 31, 1897, inclusive;

December 10, 1897, to July 16, 1898, inclusive;

October 24, 1898, to March 4, 1899, inclusive;

October 28, 1899, to April 27, 1900, inclusive,

aggregating one (1) year eight (8) months and twelve (12) days.

During his terms of service he was paid at the rate of $3.20 a day for the time served prior to July 1, 1899, amounting to one year two months and twelve days, and at the rate of $4 a day for such service rendered after July 1, 1899, amounting to six months.

He was not, during any of the periods of his employment, allowed a leave of absence, nor did he make application for the same or for a money equivalent therefor. (Finding IV.)

If allowed leave of absence, thirty days a year, he would have received fifty-one days' leave.

If, instead of receiving such leave, he had been paid a money equivalent for the same, he would have received $3.20 a day for thirty-six days, and $4 a day for fifteen days, amounting to $175.20.

The Court of Claims rendered judgment in favor of the claimant for $175.

ASSIGNMENT OF ERRORS.

The court erred:

First. The provisions of the acts of January 12, 1895 (ch. 23, 2 Supp. R. S., 344), and June 11, 1896 (ch. 320, par. 10, 2 Supp. R. S., 526), granting *pro rata* leaves of absence with pay to employees of the Government Printing Office serving for fractional parts of a year, being mandatory (opinion of the court, p.

5, record), the court erred in not holding that it had no jurisdiction in the case, and that the appropriate remedy for the claimant to have pursued would have been the *writ of mandamus*, directed to the Public Printer.

Second. The claimant having failed to apply at any time during his several terms of service for a leave of absence or for a money equivalent for the same (Finding IV), and having entered into a settlement with the defendants, and having received, without protest or complaint, payment in full of all demands from said defendants (Finding II), the court erred in not holding that the said claim had been fully paid and satisfied.

Third. The court erred in its judgment that the claimant, a temporary employee of the Government Printing Office, serving for fractional parts of a series of years, set forth in Finding I, is entitled to recover against the defendants the sum of $175 as a money equivalent for unused *pro rata* leaves of absence accumulated during the several different periods of his said employment.

Fourth. The court erred in not dismissing the claimant's petition.

ARGUMENT.

JURISDICTION—MANDAMUS APPROPRIATE REMEDY.

The proviso of the act of January 12, 1895 (sec. 23, 2d Supp., 344), "That it shall be lawful to allow *pro rata* leave to those serving fractional parts of the year," and the proviso of the act of June 11, 1896 (ch. 320, par. 10, 2d Supp. R. S., 526), "That it shall be lawful to allow pay for *pro rata* leave to those serving fractional parts of a year," are construed together by the

court below as meaning that temporary employees of the Government Printing Office, serving for fractional parts of a year, are entitled to *pro rata* leaves of absence, in kind, with pay, and that the provisions are mandatory in their character. (Record, p. 5.)

> In saying, "That it shall be lawful to allow pay for *pro rata* leave," the new statute imposed the general obligation on the Public Printer to allow the *pro rata* leave of absence, with pay, in kind, on those serving fractional parts of a year. Though this statute is only permissive in terms, the authority must be construed to be a duty in general. The words "it shall be lawful" are mandatory. (*Mason* v. *Fearson*, 9 How., 248; *Supervisors* v. *United States*, 4 Wall., 435; *Mayor of New York* v. *Furze*, 3 Hill, 614; *Bell* v. *Caldwell*, 107 Pa. St., 48; *Stines* v. *Franklin Co.*, 48 Mo., 167; *Blak* v. *R. R.*, 39 N. H., 435; *Arnold* v. *Pawtucket*, 41 Atlantic Reporter, 576; *Leavenworth* v. *Platte Co.*, 42 Mo., 174; *State* v. *Newark*, 4 Dutcher, 491; *Hugg* v. *Camden*, 39 N. J. Law, 620; *Safford* v. *Morrison*, 53 Md., 14.) Record, p. 5. (Opinion of the court.)

The law governing the issuance of the writ of mandamus in this class of cases is very clear. Where a discretion as to the performance of the duty is vested in the public official, the writ will not be issued; where the duty is ministerial (mandatory), the writ will be issued.

The Supreme Court, in the *United States ex rel. Dunlap* v. *Black*, said:

> The amenability of an executive officer to the writ of mandamus to compel him to perform a

duty required of him by law was discussed by Chief Justice Marshall in his great opinion in the case of *Marbury* v. *Madison* (1 Cranch, 137), and the radical distinction was there pointed out between acts performed by such officers in the exercise of their executive functions, which the Chief Justice calls political acts, and those of a mere ministerial character; and the rule was distinctly laid down that the writ will not be issued in the former class of cases, but will be issued in the latter.

* * * * *

The principle of law deducible from these two cases [*Kendall* v. *United States on the Relation of Stokes*, 12 Peters, 524., and *Decatur* v. *Paulding*, 14 Pet., 497] is not difficult to enounce. The court will not interfere by mandamus with the executive officers of the Government in the exercise of their ordinary official duties, even where those duties require an interpretation of the law, the court having no appellate power for that purpose; but when they refuse to act in a case at all, or when, by special statute or otherwise, a mere ministerial duty is imposed upon them—that is, a service which they are bound to perform without further question—then, if they refuse, a mandamus may be issued to compel them. (128 U. S., pp. 44 and 48.)

The Public Printer, in the case at bar, did not act at all, so far as allowing the claimant a leave of absence is concerned, and the court below find that the claimant did not actually apply for a leave or a

money equivalent for the same, but the court did hold that the Public Printer's duty was ministerial.

In the case of the *United States* v. *McLean*, at page 753, the Supreme Court held that—

> If the executive officer failed to do his duty, he might have been constrained by a *mandamus*. But courts can not perform executive duties, or treat them as performed, when they have been neglected. They can not enforce rights which are dependent for their existence upon a prior performance by an executive officer of certain duties he has failed to perform. The right asserted by the claimant rests upon a condition unfulfilled. The judgment was therefore erroneous and must be reversed, and the record remitted to the Court of Claims, with instructions to dismiss the petition; and it is so ordered. (95 U.S. 753)

In the case at bar the claimant contends that the duty neglected by the Public Printer was his failure to allow *pro rata* leaves of absence in kind, or their money equivalent to him during the several terms of his employment, set forth in Finding I, whereas had he performed that duty, it must necessarily have been upon his own motion, as the claimant made no application for either a leave or its money equivalent. It is extremely doubtful whether there is any obligation resting upon the Public Printer to allow a leave of absence before an application has been made for the same. The court therefore is called upon to perform a duty where there is a condition precedent unperformed by the claimant, which had he performed would have

left another condition to be performed by the Public Printer.

While the language itself of the provisions of the acts granting *pro rata* leaves of absence to temporary employees of the Government Printing Office is, by weight of authorities, considered mandatory and imperative, yet there is another provision of the act of June 11, 1896, general in character, which declares that leaves of absence shall only be allowed "under such regulations and at such times as the Public Printer may designate."

The words "under such regulations" would appear to indicate that a certain amount of discretion is vested by the act in the Public Printer, as he may by "regulations" impose certain conditions upon employees, which must be performed before making application for leaves of absence.

The Court of Claims in the *Harrison case* (26 C. Cls. R., at pages 270 and 271) said:

> He is authorized to administer it by "regulations," and may prescribe general rules which would practically exclude individual applications. He may make the leave of absence dependent upon good conduct, and in the exigency of pressing work, when other employees could not be procured, he would be justified in refusing it altogether.

At any rate, the courts can not "enforce rights which are dependent for their existence upon a prior performance by an executive officer of certain duties which he failed to perform."

ACCORD AND SATISFACTION.

The claimant in his petition alleges that—

> He has made application to the Public Printer and the Auditor for the State and Other Departments, respectively, for *pro rata* payment for his unused leaves of absence, but both have declined to allow him the same, the former on the ground that temporary employees have never been allowed leaves of absence, and the latter on the ground that he had no records in the office throwing light on the claim. (Record, p. 1.)

The Court of Claims evidently did not consider this allegation in the petition substantiated by the evidence, for while the court has not touched upon this feature of the case in its opinion, it has, in its Finding IV, flatly contradicted the material statement of the petition.

> The claimant did not, at any time during his several terms of service, set forth in Finding I, apply for a leave of absence or for a money equivalent for the same. No leave of absence was granted or allowed to the claimant, for the reason that under the rules adopted by the Public Printer regarding leaves of absence, persons temporarily employed were not granted leave. (Finding IV, record, p. 3.)

The court find that the claimant was paid for his services during the several terms of his employment (Finding II), and it is evident that he received his pay without protest or complaint, as he made no claim for extra pay until all connection between himself and the Government Printing Office had been severed; therefore, the defendants had every reason to believe that

he was perfectly satisfied with the settlement of his accounts.

In the *Garlinger case* the Supreme Court said:

> It is not found that the claimant himself ever demanded, during the period of his service, the compensation he now seeks. What he complained of was that, after he had performed an all-night service, he was not excused from duty the following night. He was not employed for any specific period, and was at liberty to quit the service if he thought the duties too onerous. He, however, elected to remain during the period above mentioned, and to receive the compensation awarded him by the collector without any protest as to its insufficiency. It may be fairly presumed that the collector, in paying, and the claimant, in accepting, the money paid, supposed that the payments were in full. Such a course of conduct, we think, brings this claimant within the principle of well-settled cases, that the receipt of payment, purporting to be in full, where there is no fraud or coercion, can not afterwards be repudiated as insufficient. *Baker* v. *Nachtrieb*, 19 How., 126; *United States* v. *Child*, 12 Wall., 232; *De Arnaud* v. *United States*, 151 U. S., 483. (*Garlinger* v. *United States*, U. S. R., vol. 169, p. 322.)

This case, in the feature of its discussion in the foregoing paragraph, is very similar to the case at bar, because in the latter case the claimant neither requested a leave of absence nor a money equivalent in lieu thereof, but received his pay as a full settlement for his services.

GROWTH OF LEGISLATION IN RELATION TO LEAVES OF ABSENCE FROM THE GOVERNMENT PRINTING OFFICE.

In order to arrive at a proper understanding of the statutes enacted by Congress in relation to leaves of absence from the Government Printing Office, all of the acts on that subject, or so much thereof as may be necessary, will be quoted in their chronological order for the purpose of comparison.

Prior to the 1st day of July, 1886, leaves of absence were not enjoyed by any of the employees of the Government Printing Office. By the act of June 30, 1886, chapter 572, 1 Supp. R. S., 499, entitled "An act granting leave of absence to employees in the Government Printing Office," it is provided:

> That the employees of the Government Printing Office, whether employed by the piece or otherwise, will be allowed a leave of absence, with pay, not exceeding fifteen days in any one fiscal year, after the service of one year and under such regulations and at such time as the Public Printer may designate. Such employees as are engaged on piecework shall receive the same rate of pay for the said fifteen days' leave as will be paid the day hands:
>
> *Provided*, That those regularly employed on the Congressional Record shall receive leave, with pay, at the close of each session, *pro rata* for the time of such employment.
>
> SEC. 2. That this act shall take effect on and after the first day of July, 1886.

The act of August 1, 1888 (ch. 722, 1 Supp. R. S., 600), entitled "An act to extend the leave of absence

of employees in the Government Printing Office to thirty days per annum," provides:

> That the act entitled "An act granting leave of absence to employees in the Government Printing Office," approved June 30, 1886, be so amended as to extend the annual leave of absence therein described to thirty days in each fiscal year: *Provided*, That it shall be lawful to allow *pro rata* leave to those serving fractional parts of a year.

The act of June 19, 1894 (2 Supp. R. S., 193), provides:

> Hereafter the Public Printer is authorized to pay *pro rata* leave of absence out of any appropriation for leaves of absence to employees of the Government Printing Office in any fiscal year, notwithstanding the fact that thirty days' leave of absence, with pay, may have been granted to such employees in that fiscal year on account of service rendered in a previous fiscal year.

The act of January 12, 1895 (ch. 23, 2 Supp. R. S., 344), provides:

> The employees of the Government Printing Office, whether employed by the piece or otherwise, shall be allowed leaves of absence with pay to the extent of not exceeding thirty days in any one fiscal year under such regulations and at such times as the Public Printer may designate, at the rate of pay received by them during the time in which said leave was earned; but such leaves of absence shall not be allowed to accumulate from year to year.

Such employees as are engaged on piece-word shall receive the same rate of pay for the said thirty days' leave as will be paid to day hands:

Provided, That those regularly employed on the Congressional Record shall receive leave, with pay, at the close of each session, *pro rata* for the time of such employment:

And provided further, That it shall be lawful to allow *pro rata* leave to those serving fractional parts of the year.

The act of March 2, 1895 (ch. 187, par. 3, 2 Supp. R. S., 427), provides:

Hereafter the Public Printer is authorized to pay *pro rata* leave of absence out of any appropriations for leaves of absence to employees of the Government Printing Office in any fiscal year, notwithstanding the fact that thirty days' leave of absence, with pay, may have been granted to such employee in that fiscal year on account of service rendered the previous fiscal year.

The act of June 11, 1896 (ch. 320, par. 10, 2 Supp. R. S., 526), provides:

The employees of the Government Printing Office, whether employed by the piece or otherwise, shall be allowed leaves of absence with pay to the extent of not exceeding thirty days in any one fiscal year, under such regulations and at such times as the Public Printer may designate, at the rate of pay received by them during the time in which said leave was earned; but such leaves of absence shall not be allowed

to accumulate from year to year. Such employees as are engaged on piecework shall receive the same rate of pay for the said thirty days' leave as will be paid to day hands: *Provided*, That those regularly employed on the Congressional Record shall receive leave, with pay, at the close of each session, *pro rata* for the time of such employment: *And provided further*, That it shall be lawful to allow pay for *pro rata* leave to those serving fractional parts of a year; also to allow pay for *pro rata* leave of absence to employees of the Government Printing Office in any fiscal year, notwithstanding the fact that thirty days' leave of absence, with pay, may have been granted to such employees in that fiscal year on account of service rendered in a previous fiscal year. And the Public Printer is hereby authorized to pay to the legal representatives of any employees who have died during the fiscal years of eighteen hundred and ninety-four, eighteen hundred and ninety-five, eighteen hundred and ninety-six, or may thereafter die, who have or hereafter may have any accrued leave of absence due them as such employees, and said claims to be paid out of any unexpended balances of appropriations for the payment of leaves of absence to the employees of the Government Printing Office, for the fiscal years eighteen hundred and ninety-four, eighteen hundred and ninety-five, eighteen hundred and ninety-six, and out of any future appropriations for leaves of absence.

The general deficiency appropriation act of July 19, 1897 (30 Stat. L., 134), provides—

> That the Public Printer be, and he is hereby, authorized and directed to pay the employees and former employees and the legal representatives of deceased former employees of the Government Printing Office such sums as may be due said employees and former employees for accrued and unpaid leaves of absence for the fiscal years 1887 to 1894, both inclusive; and the sum of $57,859.60, or so much thereof as may be necessary, is hereby appropriated for the purpose.

CONSTRUCTION OF THE ACTS RELATING TO LEAVES OF ABSENCE FROM THE GOVERNMENT PRINTING OFFICE.

In order to construe the foregoing statutes intelligently, to compare them, and to discover their true meaning, it is proper to consider a few of the well-established rules of construction:

> Subsequent legislation repeals previous inconsistent legislation, whether it expressly declares its repeal or not. In the nature of things it would be so, not only on the theory of intention, but because contradictions can not stand together. This intention to repeal, however, will not be presumed, nor the effect of the repeal admitted, unless the inconsistency is unavoidable and only to the extent of repugnance. Implied repeals are not favored. One statute is not repugnant to another unless they relate to the same subject and are enacted for the same purpose. Where there is a difference in the whole purview of two statutes apparently re-

lating to the same subject, the former is not repealed. (Sutherland on Statutory Construction, sec. 138, p. 180.)

But a fundamental principle underlying these rules is that an intelligent purpose shall be ascribed to the law making power—an intention to accomplish something by the enactment. Before the judiciary undertakes to discover what the legislature intended to do, it must concede that the legislative will intended to do something. (*Converse* v. *United States*, 26 C. Cls. R., 6, 10.)

It is evident from the foregoing statutes that if an employee of the Government Printing Office, whether a regular employee or one employed for a fractional part of a year, desired to obtain a leave in kind and had been refused, his one remedy would have been a *writ of mandamus*. Now, let us endeavor to ascertain what the "intelligent purpose" was that Congress had in mind when it enacted the various statutes granting leaves of absence to the employees of the Government Printing Office. It was not until June 30, 1886, that any of the employees of the Government Printing Office were granted leaves of absence, and even then only the regular employees were granted a leave, not exceeding fifteen days, with pay. The act of August 1, 1888, granted regular employees an increase of fifteen days, making a leave of thirty days in each fiscal year, and also for the first time granted to the temporary employees, or those serving a fractional part of a year, a *pro rata* leave. On June 19, 1894,

Congress authorized the Public Printer to pay *pro rata* leaves of absence to the regular employees of the Government Printing Office in any fiscal year notwithstanding the fact that *such employees* had already received thirty days' leave of absence with pay on account of services rendered in a *previous* fiscal year. This provision was enacted in exactly the same language in the act of March 2, 1895.

In the act of January 12, 1895, Congress, after providing for a leave of thirty days in each fiscal year for the regular employees of the Government Printing Office, with pay, also provided that such leaves of absence shall not be allowed to accumulate from year to year, and also reenacted that portion of the act of August 1, 1888, which provides that it shall be lawful to allow *pro rata* leave to those serving fractional part of a year. From the language of these different acts taken in its ordinary sense it is very evident that while Congress intended to allow *pro rata* leaves of absence in kind, with pay to those serving for fractional parts of a year, it is very evident that it also intended that no pay should be allowed to them for unused and accumulated leaves.

In the act of June 11, 1896, Congress, after providing that leaves of absence shall not be allowed *to accumulate from year to year*, also provides, among other things, that it shall be lawful to pay for *pro rata* leaves to those serving a fractional part of a year; also to allow pay for *pro rata* leaves of absence to employees of the Government Printing Office in any fiscal year,

notwithstanding the fact that thirty days' leave of absence, with pay, may have been granted to such employees in that fiscal year on account of services rendered in a previous fiscal year. It is evident that this is the first act by which Congress intended to allow payment to those employees serving for a fractional part of a year during their *pro rata* leaves, because if the act of 1894 was intended to operate for the benefit of those employees serving for a fractional part of a year, as well as for the regular employees of the Government Printing Office, it would only have been necessary to have provided in the act of 1896 for the allowance of pay for *pro rata* leaves of absence of employees of the Government Printing Office in any fiscal year, notwithstanding the fact that thirty days' leave of absence with pay may have been granted to any employee during that fiscal year on account of services rendered in a previous fiscal year, because the proviso allowing pay for *pro rata* leave to those serving fractional parts of a year would have been unnecessary and superfluous. So, from the wording of the act of 1896, it is very clear that Congress only intended by the act of 1894 to provide for the payment of regular employees. A repetition in the act of January 12, 1895, of the provisions of the act of 1888, in regard to those serving a fractional part of a year, is very significant, for if it had been intended by Congress that pay should be allowed them for the leaves so granted it would have said so there and then; but it did not say so, therefore it is to be presumed that Congress intended

that they should have no pay for such leaves. This provision, contained in the acts of August 1, 1888, and January 12, 1895, is not repugnant to, or inconsistent with, the provision contained in the act of June 11, 1896, which provides that it shall be lawful to allow pay for *pro rata* leaves to those serving a fractional part of a year, and as implied repeals are not favored, it is clear that the proper course to follow is to construe these two provisions together, by doing which a very natural, just, and sensible result would be obtained, to wit, that it shall be lawful to allow *pro rata* leave to those serving fractional parts of a year, with *pro rata* pay for said leave. If this construction is correct, an employee serving for a fractional part of a year has no better right to double pay for an unused leave of absence than a regular employee of the Government Printing Office, because all that he is entitled to is a *pro rata* leave with pay, and all that a regular employee of the Government Printing Office is entitled to is a leave of thirty days with pay, or, if he should sever his connection with the Government Printing Office, *pro rata* leave with *pro rata* pay for the year in which he so severed his connection with that office.

The Court of Claims in *Harrison* v. *United States* (26 C. Cls. R., 268) has said:

> Statutes which in plain terms declare that eight hours shall constitute the limit of a day's work and $3.20 shall constitute the maximum of a day's pay can not be forced by construction to mean that the Public Printer, by the simple expedient of withholding leaves of absence,

> can raise wages to $6.40 a day for thirty days in the year, or for twelve months' work can give a man thirteen months pay. The court, therefore, should look for some other purpose than giving gratuities for raising wages as the purpose of Congress in the enactment of these laws.

If this were true an employee serving a fractional part of a year would have an advantage not only over the regular employees of the Government Printing Office, but also over the employees of every other office and department under the United States Government; and the legislation which gave that advantage would be class legislation of the very worst character, unjust in principle and vicious in practice, and especially forbidden by the Constitution of the United States. It can not for an instant be presumed that Congress intended to do anything of the kind, and such a result could only be arrived at by extremely strained and unnatural interpretations and constructions of the statutes which have been quoted in this brief. The reason why Congress in the general deficiency appropriation act of July 18, 1897, directed payment to employees and former employees and the legal representatives of deceased former employees of the Government Printing Office for accrued and unpaid leaves of absence for the fiscal years 1887 to 1894, both inclusive, was because during those years no provision was made for the payment of leaves of absence of employees serving fractional parts of a year, and Congress probably considered it an injustice to allow leaves of

absence without pay; therefore it enacted this provision, and in order to avoid class legislation, it included all of the employees of the Government Printing Office. But that there is any reason for Congress to now pass such an act is absurd, because the employees serving fractional parts of a year stand on exactly the same footing, in regard to leaves of absence, that all other employees of the Government service do, and that Congress would desire to favor this class of employees above all others is improbable. The fact that Congress did insert this provision in the general deficiency appropriation of 1897 is no better argument for the employees serving a fractional part of a year than it is for the permanent and regular employees to receive double pay for leaves of absence that have not been granted them, and the provision of this act certainly affords no ground for the claimant's contention, that Congress intended to reverse the decision of the Court of Claims in the Harrison case, or that it intended to legislate for the future as well as the past. It has specified certain years in the past, but it has neither directly nor indirectly intimated that this action was intended to have any effect, whatever, for the future, and it is unreasonable to suppose that Congress intended to vest in the Public Printer authority to double the pay, for thirty days, of the regular employees of the Government Printing Office, and to double the pay for the time occupied by the *pro rata* leaves to those serving fractional parts of a year by the simple process of refusing to said regular employees, and to those serving fractional parts of a year, leaves of absence to which

they were entitled. That is exactly what it would amount to if the claimant is correct in the position that he has taken.

The Court of Claims, in placing its construction upon the act of June 11, 1896, in its opinion, uses this language:

> In saying "that it shall be lawful to allow pay for *pro rata* leave" the new statute imposed the general obligation on the Public Printer to allow the *pro rata* leave of absence with pay in kind to those serving fractional parts of a year. Though this statute is only permissive in terms, the authority must be construed to be a duty in general. The words "it shall be lawful" are mandatory.

The only leaves of absence that the employees of any of the Departments have been entitled to, heretofore, have been leaves in *kind*, and if for any reason they failed to receive them the matter ended right there, unless, indeed, Congress came to their aid and passed an act granting payment as a gratuity. The only remedy that employees of any of the Departments possessed was the writ of mandamus, and as the opinion of the court places the employees serving for fractional parts of a year, in the Government Printing Office, on the same footing as regular employees in all of the Departments, it follows that their remedy was also a writ of mandamus. The principal if not the only reason given by the court for its decision is found in the following quotation from its opinion:

> If we shall hold that the Public Printer could at will refuse the leave of absence in kind as

> well as the pay for the allowed but unused leaves, then employees serving fractional parts of a year would at the will of the Public Printer be deprived of both the leave and the pay.

The Court of Claims appears to consider the condition of employees in the Government Printing Office, in regard to leaves of absence, anomalous, and that they are subjected to hardships in that office which are unknown to the employees of any other office or department under the Government. That it is clearly in error in this regard is shown by reference to some of the acts passed by Congress regulating leaves of absence in other branches of the Government service.

The attention of the court is called to chapter 373, paragraph 4, 2d Supp. R. S., p. 509, passed June 8, 1896, three days before the act regulating leaves of absence in the Government Printing office was enacted, which reads:

> That the compositors and pressmen employed in the awards division of the Bureau of Engraving and Printing shall be allowed leave of absence with pay, not exceeding thirty days in any one year, or a *pro rata* portion thereof for a less time than one year, under such regulations and at such time or times as the chief of the Bureau, with the approval of the Secretary of the Treasury, may prescribe and designate, and in conformity with the act approved July 6, 1892, granting leaves of absence with pay to the employees of the Bureau of Engraving and Printing.

The provision of the act approved July 6, 1892, incorporated in the above paragraph, says (chap. 154, 27 Stat. L., p. 87):

> That the employees of the Bureau of Engraving and Printing, including the pieceworkers, shall be allowed leave of absence with pay, not exceeding thirty days in any one year, under such regulations and at such time or times as the chief of the Bureau, with the approval of the Secretary of the Treasury, may prescribe and designate: *Provided*, That the length of the leave of absence of any employee of said Bureau doing piecework, and the pay during such leave of absence, shall be determined by the average amount of work done by such person and the pay therefor during the several months of the year.

The court will probably take notice that a very large force is employed in the Bureau of Engraving and Printing and that the restrictions imposed in the above-quoted acts in regard to the conditions under which leaves of absence may be granted to employees are more severe than those imposed in the acts regulating the granting of leaves of absence in the Government Printing Office, because in the Bureau of Engraving and Printing they are granted under such regulations and at such time or times as the chief of the Bureau with the approval of the Secretary of the Treasury may prescribe and designate, and the leaves of those engaged upon piecework and their pay during such leaves of absence are dependent upon the

average amount of work of each employee and the pay therefor during the several months of the year.

The leaves of employees of the District government are regulated by the following provision (chap. 176, par. 1 (2), 2 Supp. Rev. Stat., 411), passed 1895:

> *Provided*, That the Commissioners of the District of Columbia are authorized hereafter, *in their discretion*, to grant leave of absence, not to exceed thirty days to any individual in any fiscal year, to regular employees, not to exceed thirty days annually, appointed directly by the Commissioners and paid out of general appropriation and whose service is continuous, but who receive per diem compensation.

The above provision renders leaves of absence *entirely discretionary* with the Commissioners of the District of Columbia, and if they should think proper it would not be compulsory upon them to grant any leave at all to employees of that branch of the government.

By the act passed in 1896, chap. 419, par. 8 (7), 2 Supp. R. S., 523, the leaves of absence of the police force of the District of Columbia is regulated in the following manner:

> Each of the members of the Metropolitan police shall be entitled to twenty days' leave of absence each year with pay, the time of leave in each instance to be determined by the District Commissioners.

And the provision regulating the leaves of absence of members of the fire department was passed the same year in exactly the same language.

The following year, 1897, chap. 387, par. 6, 2 Supp. R. S., 601, was enacted:

> Hereafter each of the members of the Metropolitan police shall be entitled to leave of absence each year with pay for such time, not exceeding twenty days, as the Commissioners shall determine.
>
> Paragraph 7. Hereafter each of the members of the fire department shall be entitled to leave of absence each year, with pay, for such time, not exceeding twenty days, as the Commissioners shall determine.

The act of 1896 granted to policemen and firemen twenty days' leave of absence with pay in each year, and left only the time to be determined by the Commissioners.

The act of 1897 granted them leaves of absence not exceeding twenty days, as shall be determined by the Commissioners, thereby placing it in the power of the Commissioners to cut down their leaves to one day if they should see fit.

Paragraph 7 of chapter 387 of the act of 1897, above quoted, enacts precisely the same provision in regard to granting leaves of absence to members of the fire department.

Comparison of the legislation of 1896 and 1897 in regard to the police force and fire departments indicates that the tendency of legislation is to place greater discretion in the hands of those granting leaves of absence than was formerly possessed by them.

Chapter 190, approved February 1, 1901 (31 Stat.

L., 746), relating to the leaves of absence of employees of the navy-yards, etc., reads as follows:

> That each and every employee of the navy-yards, gun factories, naval stations, and arsenals of the United States Government be, and is hereby, granted fifteen working days' leave of absence each year, without forfeiture of pay during such leave: *Provided*, That it shall be lawful to allow pro rata leave only to those serving twelve months or more: *And provided further*, That in all cases the heads of divisions shall have discretion as to the time when the leave can best be allowed without detriment to the service, and that absence on account of sickness shall be deducted from the leave thereby granted.

In the above act employees of the navy-yards, etc., are only granted leaves of absence after service of twelve months or more, and the time of said leaves is left tc the discretion of the heads of divisions, and absence on sick leave is deducted from their leaves of absence—a hardship not shared by employees of the Government Printing Office.

The leaves of absence of officials of the Weather Bureau of the city of Washington are taken care of by chapter 85, passed in 1898 (30 Stat. L., 340):

> Thirty local forecast officials, section directors, observers, operators, repair men, messengers, laborers, and other necessary employees, outside of the city of Washington, who, without additional expense to the Government, may hereafter, in the discretion of the Secretary of

Agriculture, be granted such leaves of absence as are now authorized to employees in the office of the Chief of the Weather Bureau, not to exceed thirty days in any one year.

Certainly the lot of these weather officials in regard to their leaves of absence is not an enviable one, even compared with that of the employees of the Government Printing Office. This act is two years later than the act granting *pro rata* pay for leaves to employees of the Government Printing Office.

Chapter 555 of the act of 1901 (31 Stat. L., 202) provides for the employees of the Bureau of Animal Industry, outside of the city of Washington, and reads as follows:

Salaries and expenses, Bureau of Animal Industry, and the employees of the Bureau of Animal Industry outside of the city of Washington, may hereafter, in the discretion of the Secretary of Agriculture, be granted leaves of absence not to exceed fifteen days in any one year.

This is one of the latest acts passed regulating leaves of absence of the employees of the Government and grants employees therein named only fifteen days leave in any one year, in the discretion of the Secretary of Agriculture, and says nothing whatever about their pay during said leave.

Chapter 466 of the act of February 23, 1901, section 3 (R. S., 2 Supp., p. 1489), provides for leaves of absence of employes of the Census printing office.

SEC. 3. That mechanics and other persons employed in the Census printing office, whether

> employed by the piece or otherwise, shall be allowed annual leave of absence and sick leave with pay, under the same terms as now or hereafter may be prescribed in the Government Printing Office. * * *
>
> *Provided*, That the Director of Census may designate the time when annual leave shall be taken.

It will be noticed in the above act that while the regular employees of the Census printing office are granted annual leaves of absence, no provision whatever has been made for *pro rata* leaves to employees serving for less than a year at a time. The fact that the leaves of regular employees of the Census printing office are allowed under the terms prescribed for leaves from the Government Printing Office would appear to indicate that the duties and responsibilities of employees of both offices are similar.

Provisions of acts relating to the leaves of absence of the above-mentioned employees of the Government are selected because the employees therein provided for are engaged in the performance of arduous and exacting duties, and in two of the classes so selected, policemen and firemen, oftentimes dangerous duties.

The judgment in the case at bar is a precedent that extends far beyond the limits of the Government Printing Office, and embraces every department of the Government where leaves of absence are granted under such regulations and at such times as the officials authorized to allow them may designate, and is far more sweeping than at a first glance it would appear to be.

The act of July, 1886, provided for leaves of absence to the employees of the Government Printing Office for a period not exceeding fifteen days in any one fiscal year, after service of one year, under such regulations and at such time as the Public Printer may designate.

The act of June 11, 1896, provided for leaves of absence to the employees of the Government Printing Office not to exceed thirty days in any one fiscal year, under such regulations and at such times as the Public Printer may designate. It will be observed, therefore, that the act of 1896 does not require the services of one year before a leave of absence may be granted, which clearly demonstrates that the act of 1896 was intended to cover the case of employees serving for fractional parts of a year.

The act of 1896 goes on to say: "But such leaves of absence shall not be allowed to accumulate from year to year."

The prohibition of the statute was evidently intended to apply to those employees serving for a fractional part of a year, as well as for those serving for more than a year at a time, or, in other words, to regular employees.

The act of June 19, 1894, permitted the leaves of regular employees to accumulate to the extent of two years, and this provision was also incorporated in the act of June 11, 1896, but nowhere are the leaves of those serving for fractional parts of a year permitted to accumulate at all. Leaves not being allowed *to accumulate*, how can an employee of the Government Print-

ing Office serving for fractional parts of a year be permitted to draw double pay for five separate and distinct leaves of absence to which he claims he was entitled and which he did not receive?

It is true, further on in the act of 1896, the following language is used: "*And provided further*, That it shall be lawful to allow pay for *pro rata* leave to those serving fractional parts of a year."

If Congress had intended that the temporary employees therein mentioned should be entitled to draw pay for their accumulated leaves of absence, it would have been easy to have made that meaning clear by using the following language: "*And provided further*, That it shall be lawful to allow pay for unused and accumulated *pro rata* leaves of absence to those serving fractional parts of a year."

It will be observed that Congress in the above provision used the word "leave" in the singular, showing clearly that it could not be intended to apply to accumulated leaves.

The fact that Congress, in the general deficiency appropriation act of July 19, 1897 (30 Stat. L., 134), provides for the payment of accrued and unpaid leaves of absence for the fiscal years from 1887 to 1894, both inclusive, is proof positive that it did not consider the employees, and former employees, of the Government Printing Office and the representatives of deceased former employees, legally entitled to such payment without a special act of Congress for their benefit.

If the above provision of the act of July 19, 1897, has any effect whatever upon this question, it is

against the contention of the claimant, that he is entitled to be paid for his unused and accumulated leaves of absence.

Section 1764 of the Revised Statutes provides:

> No allowance or compensation shall be made for any extra services whatever, which any officer or clerk may be required to perform, unless expressly authorized by law.

Section 1765 provides:

> No officer in any branch of the public service, or any other person whose salary, pay, or emoluments are fixed by law or regulations, shall receive any additional pay, extra allowance, or compensation, in any form whatever, for the disbursement of public money, or for any other service or duty whatever, unless the same is authorized by law, and the appropriation therefor explicitly states that it is for such additional pay, extra allowance, or compensation.

The services rendered by claimant during the leaves of absence to which he was entitled, but which he did not receive, may certainly be regarded as *extra services* within the meaning of the above-quoted provisions of the Revised Statutes, and that there is no law *expressly authorizing* payment for those extra services is patent.

Section 3648, Revised Statutes, provides: "Payment shall not exceed the value of the services rendered."

The value of a day's work in the Government Printing Office, by the claimant in this case, was fixed by law, and there is no statute which provides that his services for the time during which he worked, and to

which he was entitled for a leave of absence, were worth double the money value of his services for a period of the same length of time during which he worked, and to which he was not entitled as a leave of absence. In other words, were his services more valuable to the Government for one period of time than for another, provided he was employed on the same kind of work for both periods?

The Court of Claims in its opinion (p. 6 of the record) says:

> It is true this legislation is not in line with the original purpose for which leaves of absence were granted. That purpose was well shown to be in *Harrison's case* to restrict work, but not to increase compensation. Anomalous and inexpedient as it may seen to be to abandon the policy of the law pertaining to leaves, the underlying reason of which has always been to afford rest and recreation to steady workers, we think it has been done by the innovation that directs the leave in kind to those serving fractional parts of a year with *pro rata* pay for the limited term of service.

The court here states that it is both *anomalous* and *inexpedient* to abandon what appears to have been the settled policy in regard to leaves of absence. This language is certainly very strong.

The definition of the word anomalous is, "Not conforming to rule, method, system, or analogy."

The definition of inexpedient is, "Not calculated to promote, or not considered suitable to, the particular purpose for which it was intended."

The definitions of the two words, by which the court has described what they consider the abandonment of the settled policy of the law pertaining to leaves of absence, would appear to bring the abandonment well within the doctrine of inconvenience. So that had the meaning of the provision of the statute relied upon by the court to sustain its position been more favorable to that position, the court would have been justified in applying to the said provision a meaning and intendment much more in harmony with the general tenor and spirit of the act and more in accordance with public policy.

A statute may be construed contrary to its literal meaning, when a literal construction would result in an absurdity or inconsistency and the words are susceptible to another construction which will carry out the manifest intention.

Statutes will be construed in the most beneficial way which their language will permit, to prevent absurdity, hardship, or injustice; to favor public convenience, and to oppose all prejudice to public interest. (Sutherland on Statutory Construction, p. 408, secs. 323 and 324.)

A particular construction of a statute which will occasion great inconvenience or produce inequality and injustice is to be avoided if another more reasonable interpretation is present in the statute. (*Knowlton* v. *Moore*, 178 U. S., 41.)

> All laws should be so construed as to avoid an unjust or absurd conclusion. (Chinese Laborers, 13 F., 291; Chinese Merchant, 13 F., 605.)

That it is contrary to public convenience and prejudicial to public interest to pay employees of the Government double pay for a period of time during which they have worked, and to which they were entitled as leaves of absence, is too apparent to need discussion.

An act which absolutely changes the settled and well-defined reasons for which leaves of absence are given—rest, recreation, and recuperation—for the purpose of giving double pay to a comparatively few employees, serving for fractional parts of a year, in the Government Printing Office, is a *reductio ad absurdum;* but the act of June 11, 1896, does nothing of the kind—it simply grants to temporary employees of the Government Printing Office *pro rata* leaves of absence, in kind, with pay, and allows them nothing more.

In the case of *Harrison* v. *United States*, above referred to, it was held by the Court of Claims—

> That the same result might have been legally attained by granting the claimant a leave of absence for whatever time he was entitled to and postponing the discharge until the expiration of the leave. (26 C. Cls. R., pp. 272 and 273.)

The Public Printer had no right to pay an employee for a leave of absence after his connection with the Government Printing Office had been severed, but if the Public Printer had desired to pay an employee

who was serving for a fractional part of a year in that office, and whose connection with the office was about to be severed, he might have granted him a *pro rata* leave with pay, and provided that at the expiration of said leave he should be discharged from further employment in that office, and have paid him for said *pro rata* leave at the time he actually discontinued his work in said office.

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